

REMARKS/ARGUMENTS

Title

The title has not been amended in PAIR as requested in the Preliminary Amendment of October 11, 2005. Applicants respectfully request that the amendment to the title and the amendment to specification, adding a claim to priority, be entered in this case.

Claims

Claims 16, 18 are canceled. Claims 17, 19, 20 21, 22, 23, 24 and 30 are amended. Claims 25-29 are unchanged. New claims 31-33 are added in this amendment. Support for new claim 32 can found throughout the application, particularly on page 19, lines 7-21. Support for the specific surface area in new claim 33 can be found on page 5, lines 9-11 of the specification and page 17, line 26 to page 18, line 4.

Claim Rejections -- 35 USC § 112 and § 101

New independent claims 31 - 33 have been added and the steps clearly labeled. Applicants respectfully submit that the new and amended claims meet the §112 and §101 requirements.

Rejection of claims under 35 U.S.C. § 102

1. Rejection of claims 16-17 and 21-30 under 35 U.S.C. § 102(b) as being anticipated by Yamamoto (JP 09-084540; Hei 9-084540, Asahi Breweries Ltd.)

The present invention relates to the process for producing food and beverage product by using an immersion liquid of particle size-controlled malt sprouts. The immersion liquid is obtained by immersing these malt sprouts in liquid to allow the components of the malt sprouts to seep out into the liquid. By controlling the size of malt sprouts used, the unpleasant taste normally associated with malt sprouts is eliminated. The immersion liquid which is the food and beverage product itself or used to produce the

desired product does not contain any malt sprouts.

On the contrary, the invention of Yamamoto relates to the food material containing malt sprouts as a major ingredient, which is produced by crushing and sieving the malt roots and then using the resulting powder like flour to make crackers and biscuits. The present amendments and new claims should clarify that the process according to the invention produces an immersion liquid harboring components from the malt sprouts, but not the malt sprouts, which is quite different from the ground malt root flour taught by Yamamoto et al. In light of new claims 31-33, the examiner's analysis of the dependent claims will not be reviewed since the new claims clarify that an immersion liquid is produced not a ground malt sprout flour.

2. Rejection of claims 16-20, 24-26 and 28-30 under 35 U.S.C. § 102(b) as being anticipated by Todorova et al.

The summary of Todorova refers "possibilities for producing water soluble extract of malt sprouts." The method of extraction is not described and taste is not addressed. The method of extraction is likely to extract the bitter taste along with the amino acids and vitamins present in the malt sprouts. Extraction could use harsh chemicals or expensive enzymes like the extraction method described on page 2, lines 3-9 of applicants' specification. There is no discussion or production of an immersion liquid in the Todorova et al. summary, as required by the new and amended claims of the present application.

Claims rejection under 35 U.S.C. § 103

Claims 17-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamamoto in view of Todorova et al.

2. Claims 21-23 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Todorova et al. in view of Yamamoto.

As outlined in the discussion concerning the §102 rejections, combining

Yamamoto and Todorova et al. together does not disclose or suggest the producing beverage and food products by using the immersion liquid of particle size-controlled malt sprout of the invention of the present application. Applicants respectfully suggest that the new claims have clarified the significant and unobvious differences between the invention of the application and the disclosures of the two cited references.

CONCLUSION

If the Examiner has any questions or suggested Examiner's amendments, the Examiner is respectfully requested to call the undersigned.

The Commissioner is hereby authorized to charge any additional fees, or to credit any overpayment, to Deposit Account No. 50-3195.

Respectfully submitted,

Date: January 26, 2009

Manette Dennis (Reg. No. 30,623)
Ostrager Chong Flaherty & Broitman, PC
570 Lexington Avenue
New York, NY 10022-6894

Tel.: 212 681-0600
Fax: 212 681-0300
mdennis@ocfbllaw.com